JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: CHARGE OF JUDICIAL MISCONDUCT

No. 10-09-90069

Before **HENRY**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled Rules for Judicial-Conduct and Judicial-Disability Proceedings (the "Misconduct Rules"); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 et seq., and 3) the "Breyer Report," a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled Implementation of the Judicial Conduct and Disability Act of 1980. The Breyer Report may be found at: http://www.supremecourtus.gov/publicinfo/breyer committeereport.pdf. To the extent that any relevant prior decisions of the full Judicial Council of this circuit consistent with those authorities exist, they may also govern my consideration of this complaint.

Complainant has received or has access to a copy of the Misconduct Rules. In accord with those rules, the names of the complainant and subject judge shall not be disclosed in this order. See Misconduct Rule 11(g)(2).

Complainant takes issue with rulings by the subject judge in a Bivens action and numerous other underlying cases. These claims are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 11(c)(1)(B). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. *See* Breyer Report, App. E., ¶ 2.

Complainant also alleges that the judge has a conflict of interest as to at least the Bivens action, because an attorney from a firm bearing the judge's last name allegedly co-represented a bank in an unrelated case ending in 2008. The co-representation was with an attorney against whom complainant made various allegations in the Bivens action.

The Misconduct Rules require complainants to support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." See Misconduct Rule 11(c)(1)(D). Complainant has neither demonstrated nor provided evidence of a current link between the subject judge and the law firm in question such that there is a reasonable inference of a conflict of interest that would support a misconduct claim, and I can find none. Indeed, the attorney with the same name as the judge has been deceased for 11 years.

Accordingly, this complaint is dismissed pursuant to Misconduct Rule

11(c). The Circuit Executive is directed to transmit this order to complainant and

Conduct and Disability. See Misconduct Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in Misconduct Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order. *Id*.

So ordered this 5th day of January, 2010.

/s/Robert H. Henry

Honorable Robert H. Henry Chief Circuit Judge